

### REMARKS

The following remarks are responsive to the Office Action. Claims 1-14 were pending in this application. Claims 11-14, which were previously withdrawn pursuant to a restriction requirement, are canceled without prejudice herein. Claim 1 is amended herein. In addition, new Claims 15-20 are added herein. Accordingly, Claims 1-10 and 15-20 are presented for further consideration.

#### **Claim Rejections under 35 U.S.C. §102**

The Examiner rejects Claims 1-4 and 10 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,423,078 to Bays et al. ("Bays"). Applicant disagrees with the Examiner's characterization of Bays in view of the rejected claims, and Applicant respectfully traverses the rejection of these claims. However, in order to expedite prosecution and to further clarify the differences between these claims and the cited reference, Applicant has made certain clarifying amendments to Claim 1 herein. Applicant reserves the right to pursue claims similar to the original claims in a continuing application.

Applicant submits that all the claims as presented herein are novel and non-obvious over Bays and the other references cited by the Examiner in the Office Action.

Bays fails to teach or suggest one or more limitations of amended Claim 1. For example, Bays does not disclose, inter alia, translating a working surface of an instrument body over the skin of a patient to thereby abrade a skin surface without rotating the working surface relative to a longitudinal axis of the instrument body.

In column 3, lines 53-57, Bays recites, "[a]brading instrument 12 includes an outer member 16 which is held stationary by the handpiece 14 and an inner member 18 which is disposed at least partly within the outer member and rotated by the handpiece to remove the surface layer of the skin". Bays additionally recites, "[r]emoval of the surface layer of the skin is accomplished by rotating inner member 18 relative to outer member 16 to cause tip 40 to rotate within shield 22 and placing the rotating tip against the skin with the shield disposed between the tip and the user, i.e. the person performing the dermabrasion on the patient" (see column 6, lines 42-47). This is illustrated in Figure 1 of Bays reproduced below.

In contrast to Bays, the abrading structure in some embodiments of the present application is not rotated or otherwise moved relative to the instrument body when abrading skin. Rather, in such embodiments, it is the movement of the abrading structure relative to the skin that causes skin tissue to be abraded.

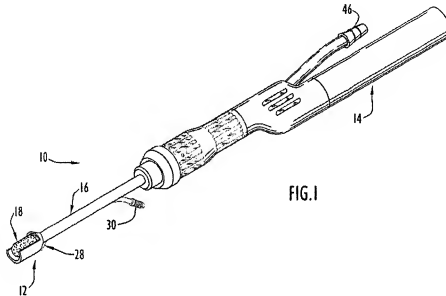


Figure 1 of Bays

Accordingly, for at least these reasons, Applicant submits that amended Claim 1 is novel and non-obvious, and thus, in condition for allowance.

Claims 2-10 depend from Claim 1 and further define the invention defined in Claim 1. Thus, for at least the reasons set forth above with respect to amended Claim 1, Applicant submits that Claims 2-10 are patentably distinguished over Bays. Further, Claims 2-10 are distinguished over Bays in view of the additional limitations defined in each of the claims. Therefore, Applicant respectfully requests the Examiner to withdraw this rejection.

**Claim Rejections under 35 U.S.C. §103**

The Examiner rejects Claims 5-8 under 35 U.S.C. §103(a) as being unpatentable over Bays in view of U.S. Patent No. 6,869,611 to Kligman et al. ("Kligman"). In addition, the Examiner rejects Claim 9 under 35 U.S.C. §103(a) as being unpatentable over Bays in view of

U.S. Patent No. 5,037,432 to Molinari ("Molinari"). Applicant disagrees with the Examiner's characterization of these references in view of the pending claims, and Applicant respectfully traverses all of these rejections. Claims 5-9 depend from amended Claim 1, which, as noted above, is novel and non-obvious over the cited references. Thus, for at least the reasons set forth above with respect to Claim 1, Applicant submits that each of Claims 5-9 is patentably distinguished over the cited references, either alone or in combination with one another.

### **New Claims**

As noted above and reflected in the listing of claims, Claims 15-20 are added herein. No new matter is being introduced by these new claims or by the amendments to the pending claims. As with Claims 1-10, Applicant submits that new Claims 15-20 are novel and non-obvious over Bays and the other references cited in the Office Action, as such references fail to teach or suggest one or more limitations of each new claim.

For example, Bays does not disclose, *inter alia*, translating an abrading structure of a handheld device's working surface over a skin surface without rotating the abrading structure relative to adjacent portion of the handheld device. *See* independent Claim 19.

Further, the references cited in the Office Action fail to teach or suggest continuously applying a vacuum through an aperture located at or near a working surface of a handheld device, or continuously aspirating debris through such an aperture while a skin surface is being abraded. *See* independent Claims 15 and 19. At least some of the embodiments disclosed in the present application are adapted to continuously apply a suction force at the aperture(s) located at or near the working surface.

In contrast, at least some of the aspirating passages (50) located along the tip (40) in Bays will be necessarily positioned against the skin surface when the instrument is used to abrade skin. Accordingly, the aspirating passages (50) that are closest to the abraded skin and other debris will be closed (e.g., generally against the skin) and not in fluid communication with the vacuum source. Thus, such passages (50) will be unavailable to receive and remove such abraded skin and other debris from the working surface. *See* Figure 5 of Bays reproduced below.

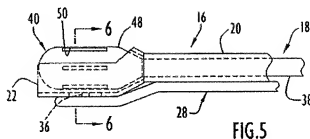


Figure 5 of Bays

Unlike the device of Bays, in some embodiments disclosed in the present application, the aperture remains unobstructed during the operation of the device, even while the skin surface is being treated. Consequently, abraded skin, spent fluids and/or other debris are continuously and promptly removed from the working end. This provides a cleaner skin surface, which can advantageously improve the microdermabrasion process.

Moreover, additional limitations included in the claims presented herein further distinguish the claimed subject matter from Bays and the other references cited in the Office Action.

No Disclaimers or Disavowals

Although the present communication may include alterations to the subject application or claims, or characterizations of claim scope or referenced art, the Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. The Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

**Application No.:** 10/699,747  
**Filing Date:** November 3, 2003

Co-Pending Applications of Assignee

Applicant provides the following table to aid the Examiner during prosecution. The following U.S. patents and patent applications are related to the above-captioned application in that they have at least one listed inventor or assignee in common with the above-captioned application:

Attorney Docket No.	Application No. (U.S. Patent No.)	Filing Date (Issue Date)	Title
EDGE.004A	11/053,409 (6,641,591)	Aug. 25, 2000 (Nov. 4, 2003)	Instruments and Techniques for Controlled Removal of Epidermal Layers
EDGE.004C2	11/417,709	May 3, 2006	Instruments and Techniques for Controlled Removal of Epidermal Layers
EDGE.004C3	11/417,396	May 3, 2006	Instruments and Techniques for Controlled Removal of Epidermal Layers
EDGE.004C1DV1	11/739,615	Apr. 24, 2007	Instruments and Techniques for Controlled Removal of Epidermal Layers

Copies of these patents, patent applications, and pending claims, including any office actions, allowances and/or other communications, are available through PAIR. However, if the Examiner so requests, Applicant will be happy to provide the Examiner with copies of any applications, pending claims, office actions, allowances, communications or any other documents, at any time.

Further, Applicant notes for the record that the claims of the present application are different and may be broader in scope than the claims in any related patent or application. To the extent that any statements made in a related case (such as amendments or characterizations regarding the scope of a claim or prior art) could be construed as a disclaimer of any subject matter supported by the present disclosure, Applicant rescinds and retracts such disclaimer. Accordingly, any listed or referenced prior art may need to be re-visited. Further, any objections or rejections made by the Examiner in the issued and allowed cases identified above may need to be re-visited.

Claims canceled in this application are done so without prejudice. Applicant is not conceding that the previously pending claims are not patentable over the art of record. Applicant reserves the right to later pursue any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or

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### CONCLUSION


In view of the foregoing amendments and remarks, Applicant respectfully submits that the claims are now in condition for allowance. Accordingly, Applicant respectfully requests reconsideration of the claims in light of the amendments and the above remarks.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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